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March 29, 1996

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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Chairman Reed E. Hundt  
Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: Local Multipoint Distribution Service, CC Docket No. 92-297

Dear Chairman and Commissioners:

As the Commission finalizes its deliberations in the above-referenced proceeding, with the expectation of auctions of 28 GHz LMDS licenses later this year, CellularVision USA, Inc. ("CVUS") would like to reiterate certain recommendations made by Shant S. Hovnanian, CEO of CVUS, at the Commission's "Auctions '96 Conference" on March 15 - recommendations that should help ensure the robust participation of small businesses in the deployment of the multi-purpose LMDS. Making LMDS a technology that is licenced to, and operated by, small businesses across this country is not just a goal of the Hovnanians, who with LMDS inventor Bernard Bossard have pioneered LMDS in this country, it is a frequently noted goal of the United States Small Business Administration (SBA) which has enunciated its support for LMDS throughout the Commission's 28 GHz rulemaking, stating in part that:

- "LMDS, due to its affordability enables a wide diversity of parties to participate in the multichannel telecommunications revolution. Small businesses could easily afford to offer LMDS service just as they can afford to build a similar service -- multipoint multidistribution systems (wireless cable). The relative low-cost also would enable groups generally underrepresented in the ownership of mass media properties

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to obtain such properties . . . ”<sup>1</sup>

- “The Office of Advocacy, in various proceedings before the Commission, has noted the need to ensure that small businesses, particularly those owned by women and minorities, have opportunities to provide telecommunications services. Congress recognized this underrepresentation when it enacted the spectrum auction provisions of the Omnibus Budget Reconciliation Act of 1993 and the Commission has done an admirable job of ensuring that designated entities have an opportunity to obtain licenses in auction proceedings. The allocation of spectrum for LMDS represents another opportunity for the Commission to ensure that small businesses can be players in the burgeoning field of wireless communication . . . LMDS can provide an excellent and low-cost means of providing small businesses with expanding their opportunity to provide wireless telecommunication services.”<sup>2</sup>

Based on the experience gained from the Commission’s PCS auctions wherein appropriate efforts were made to insure the involvement of true small businesses, and not just surrogates for Fortune 500 companies who already dominate the U.S. communications marketplace, Mr. Hovnanian spoke at the “Auctions ‘96 Conference” concerning the need for the Commission to tailor its LMDS service and auction rules in a manner that provides an opportunity for realistic and viable “small businesses” to play an important role in the ownership and operation of LMDS systems nationwide. As CellularVision stated in its Reply Comments in response to the Third NPRM in this proceeding, if the Commission is to successfully implement the mandate of Congress to encourage the participation of small businesses in this new service, and if the compelling goals of the SBA are to be realized, the Commission must adopt a realistically high threshold to attract “small” businesses that are large enough to have the wherewithal to successfully bid for LMDS licenses and ultimately to compete against entrenched cable and telephone service providers.<sup>3</sup> As Section 1.2110(b)(1) of the Commission’s Rules states, “[t]he Commission will establish the definition of

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<sup>1</sup> See Comments of the Chief Counsel for Advocacy of the United States Small Business Administration in Support of the Motion to Proceed by CellularVision, CC Docket No. 92-297, February 14, 1995, pages 4-5.

<sup>2</sup> See Ex parte filing, United States Small Business Administration, CC Docket No. 92-297, filed June 8, 1995, pages 1-2.

<sup>3</sup> See Reply Comments of CellularVision, CC Docket No. 92-297, October 10, 1995, page 38.

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a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service." <sup>4</sup>

In this regard, Mr. Hovnanian discussed the capital-intensive nature of the deployment of an LMDS system, in comparison to, for example, Broadband Personal Communications Service ("PCS"). Mr. Hovnanian explained that in connection with its commercially licensed LMDS video service in New York, CVUS does not require subscribers to pay for customer premises equipment, a large portion of the initial capital outlay required to deploy a system in a multi-million pop service area. This approach to promptly deploying LMDS is the likely norm that the LMDS industry will adopt following LMDS auctions, hopefully, later this summer. In fact, in the Third NPRM the Commission recognized that "[c]onstruction costs for LMDS may be greater than for PCS . . . ." <sup>5</sup> In view of the substantial commitment of capital that it will require to deploy an LMDS system, CVUS urges the Commission to define "small business" for LMDS purposes as an entity that has average annual gross revenues of not more than \$100 million for the preceding three years. Additionally, in order to encourage participation in LMDS auctions by more than just small businesses on one hand, and Fortune 500 companies on the other hand, Mr. Hovnanian suggested in his comments before the "Auctions '96 Conference" that the Commission provide certain installment payment benefits to entities with average annual gross revenues over \$100 million but not exceeding \$150 million, and over \$150 million but not exceeding \$200 million.

In view of the fact that each LMDS operator requires, in the aggregate, at least 1 GHz to be competitive in the provision of video, telephony and data services – a

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<sup>4</sup> 47 CFR §1.2110(b)(1)(1995); see also Amendment of Part 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Notice of Proposed Rulemaking, WT Docket No. 96-59, FCC 96-119 (released March 20, 1996)(wherein the Commission recently sought comments on a range of issues pertaining to auction and ownership rules for the "D", "E", and "F" frequency blocks of PCS, including its small business definition and auction preferences for small businesses).

<sup>5</sup> See In the Matter of Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Third Notice of Proposed Rulemaking and Supplemental Tentative Decision, CC Docket No. 92-297, FCC 95-287, para. 90 (released July 28, 1995).

requirement that is well-established in the record in this proceeding<sup>6</sup> – and in view of the fact that the Commission's proposed allocation of 2 GHz for LMDS in 1993 has now diminished to a total of 1 GHz noncontiguous in 1996, there simply is not enough LMDS spectrum available to create a set-aside for "entrepreneurs" including small businesses as the Commission did with PCS. As a result, CVUS reiterates its recommendation that the Commission auction all spectrum available for LMDS in each market as a single block. If, however, the Commission decides to auction the LMDS spectrum in individual blocks, the Commission's auction rules must, as CellularVision argued in its Reply Comments,<sup>7</sup> include specific procedures to allow a single entity to aggregate the full 1 GHz in a given service area. In particular, the Commission should permit entities to bid on all LMDS blocks within a particular BTA as a package and individually, with a package bid prevailing if it exceeds the sum of the highest bids for the individual blocks. Further, in order to maximize the efficient use of the spectrum and to promote the most rapid build-out of populated regions within BTAs, CVUS supports the Commission's proposal to permit spectrum disaggregation as well as geographic partitioning.<sup>8</sup>

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<sup>6</sup> See Letter from Texas Instruments to William F. Caton, February 28, 1996, p.2; Letter from Philips Electronics North America Corporation, CellularVision of New York, L.P., CellularVision USA, Inc., Titan Information Systems, RioVision of Texas, Inc., M/A-COM, Inc., AEL Industries, Inc., CellularVision Technology & Telecommunications, L.P., GHz Equipment Company, Inc., mm-Tech, Inc. and International CellularVision Association to William F. Caton, February 8, 1996, p.1; Reply Comments of CellularVision, supra note 1, pp.22, 25; Comments of CellularVision, CC Docket No. 92-297, September 7, 1995, p.14; Comments of Texas Instruments, CC Docket No. 92-297, September 7, 1995, p.15; Comments of ComTech, CC Docket No. 92-297, September 7, 1995, p.2; Comments of Hewlett-Packard Company, CC Docket No. 92-297, September 7, 1995, p.5; Comments of Bell Atlantic, CC Docket No. 92-297, September 7, 1995, p.3; Comments of RioVision, CC Docket No. 92-297, September 7, 1995, p.2; Comments of GHz Equipment Co., CC Docket No. 92-297, September 7, 1995, p.2; Comments of BellSouth, CC Docket No. 92-297, September 7, 1995, p.6; Comments of Northern Telecom, CC Docket No. 92-297, September 7, 1995, pp.3-4; Comments of Endgate Corporation, CC Docket No. 92-297, September 8, 1995, pp.4-5; Comments of Titan, CC Docket No. 92-297, September 7, 1995, p.4; Comments of Pacific Telesis Wireless Broadband Services, CC Docket No. 92-297, September 7, 1995, p.1.

<sup>7</sup> See Reply Comments of CellularVision, supra note 1, p.36-37.

<sup>8</sup> See Comments of CellularVision, supra note 4, pp.17-18.

Since, in LMDS auctions, small businesses presumably will be bidding directly against incumbent cable and telephone monopolists for LMDS licenses, CVUS further urges that the Commission provide small businesses with sufficient preferences in the form of bidding credits to level the auction playing field. In this regard, small businesses generally should be entitled to a 35% bidding credit; if, however, for a license in a particular market, a small business is bidding against a company with more than \$200 million in annual revenues, that small business should be entitled to a 55% bidding credit.

Additionally, since LMDS is envisioned primarily as a competitor in the cable television and local telephone service markets, in order to ensure that LMDS is truly a competitive new voice in these markets, CVUS believes that the seven Regional Bell Operating Companies and their affiliates, as well as the ten largest cable Multiple System Operators and their affiliates, each should be limited to acquiring an LMDS license in one BTA only – which BTA cannot be located in their respective cable or telephone service areas.

Finally, in terms of the appropriate formula for up-front payments for LMDS auctions, CellularVision has already explained in its Comments and Reply Comments in this proceeding that the current PCS “C” block formula, \$0.02 per pop per MHZ, was excessive for LMDS given the comparatively larger amount of spectrum that is necessary to make an LMDS system viable.<sup>9</sup> Rather, CVUS suggests that a formula of \$0.50 per pop would be appropriate for LMDS. In addition, CVUS believes that small businesses be entitled to reduced up-front payments, and suggests that as in the PCS “C” block auction, a 25% reduction to \$0.375 per pop would be appropriate.

In sum, CVUS believes that the Commission’s adoption of the provisions outlined above are vital to ensuring that true small businesses, and not surrogates for the Fortune 500 companies currently dominating the U.S. telecommunications marketplace, compete via LMDS in the video, telephony and data service marketplaces. While the preferential rules for small business adopted by the Commission for PCS “C” block bidders certainly are well-intended, it is obvious that something more realistic is required for licencing LMDS nationwide if genuine small businesses as defined above, are going to survive and prosper as stand-alone, new competitive players in the reshuffled marketplace created by the Telecommunications

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<sup>9</sup> See Reply Comments of CellularVision, *supra* note 1, pp.38-39; Comments of CellularVision, CC Docket No. 92-297, September 7, 1995, pp.33-34 (wherein CellularVision explained that at \$0.02 per pop per MHZ, the up-front payment for a 1000 MHZ LMDS license for a BTA with one million pops would be \$20 million; for the entire country, the up-front payment would be \$5 billion).

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Act of 1996. As the Small Business Administration has noted repeatedly in the record in the LMDS Rulemaking proceeding, LMDS is an exciting new opportunity ideally suited for ownership, operation and use by small businesses.<sup>10</sup> It, therefore, is incumbent upon the Commission to creatively fashion LMDS license auction rules that take the fullest possible advantage of the special opportunity that LMDS represents for achieving the Congressional goal of maximizing the participation of small businesses in the U.S. telecommunications marketplace. Based on the Commission's Congressionally-authorized flexibility to establish small business criteria based on the specific requirements of each service, CVUS, as the pioneer of the multipoint LMDS technology and as the only incumbent, commercially licenced LMDS provider in the United States, urges the Commission to seize the unique opportunity available to it as it begins licencing LMDS nationwide to insure that small business play a major role in this new and versatile technology. We believe that the adoption of the realistic and appropriate small business preference outlined above will make this goal a reality and further insure the fullest degree of competition in the video, voice and interactive marketplace through small business LMDS licensees, who today are largely absent yet eager players in the explosive telecom marketplace.

Sincerely,



Michael R. Gardner  
Counsel for CellularVision USA, Inc.

cc Blair Levin  
Ruth Milkman  
Jackie Chorney  
Lauren J. Belvin  
Rudolfo M. Baca  
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Brian Carter  
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<sup>10</sup> See Letter to Chairman Reed E. Hundt from Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration, June 8, 1995; Comments of the Chief Counsel for Advocacy of the U.S. Small Business Administration in Support of the Motion to Proceed by CellularVision, CC Docket No. 92-297, February 14, 1995; Comments of the Chief Counsel for Advocacy of the U.S. Small Business Administration on the Second Notice of Proposed Rulemaking, CC Docket No. 92-297, March 28, 1994.

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